IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 928 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SL RATHOD

Versus

GUJARAT AGRICULTURAL UNIV.

Appearance:

MR DC RAVAL FOR MR MR ANAND for Petitioner

MR SM MAZGAONKAR FOR MR SN SHELAT for Respondent No. 1

MR SUNIL K SHAH for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. The petitioner challenges the order dated 31-1-1990 at Annexure `B' to the petition, by which the respondent No.3 was appointed as a Mechanic-cum-Draftsman by the Director of the University. According to the

petitioner, he was already working as a Mechanic-cum-Draftsman under the respondent No.2 since more than six years, and was qualified for that post. The respondent No.3 had started work as Draftsman only from 19th May 1988 and he had same educational qualifications as the petitioner. The University had invited applications for the post on 9th March 1989, for which the petitioner as well as respondent No.3 had applied. The order of appointment was issued by the respondent No.3 bypassing the claim of the petitioner on extraneous consideration and with a view to favour him, as alleged by the petitioner. It is alleged that the appointment of the respondent No.3 was arbitrary and was in gross infringement of the fundamental rights of the petitioner under Article 14 and 16 of the Constitution. According to the petitioner, disproportionate weightage was given to the oral interview with a view to help the respondent No.3. Moreover, since the petitioner belonged to backward class community, the members of the selection committee who belong to higher castes, unduly favoured the respondent No.3. By an amendment, the petitioner challenged the order dated 31st March 1990, relieving the petitioner as a daily wager.

2. It was contended on behalf of the petitioner that undue favour was shown to the respondent No.3 who was less experienced than the petitioner. It was submitted that a member of the selection committee was interested in getting the respondent No.3 selected, and therefore, the selection is bad. It was also argued that method of selection adopted by the selection committee was faulty because higher marks were allotted for oral interview so that maneuver could be done for the purpose of selecting the respondent No.3. In the further affidavit in reply, filed in view of the amendment made in the petition, it is reiterated that the petitioner was purely a temporary and adhoc labourer working as a daily wager, and therefore, his services were terminated with effect from 31st March 1990 in accordance with law by the order, a copy of which was annexed to the additional affidavit in reply.

2.1 The learned counsel placed reliance on the decision of the Supreme Court in Krishan Yadav and another v. State of Haryana and others, reported in (1994) 4 SCC 165, in which it was held that public offices are meant for use and not abuse, and that it shocked the conscience of the Court to come across a systematic fraud in the selection process. The Supreme Court held that when the entire selection is stinking, conceived in fraud and delivered in deceit, individual

innocence has no place as "fraud unravels everything". It was held that the entire selection was arbitrary. The selection of all Taxation Inspectors was, therefore, set aside. In the case before the Supreme Court, in view of the serious allegations, the matter was referred by the Supreme Court to the CBI for investigation and the CBI had reported acts of favouritism, selections without interview as also on the basis of fake or ghost interviews, tampering with final records, fabrication of documents, forgery, keeping the selection list a secret, issuing appointment letters after calling selected candidates and obtaining joining reports from them on the spot without any medical test and verification of antecedents and destroying the original records including the answer books. The background in which the Supreme court set aside the selection was entirely different and has no comparison with the present case.

2.2 The learned counsel also relied upon the decision of the Supreme Court in Munindra Kumar and others v. Rajiv Govil and others, reported in AIR 1991 SC 1607, in which the Supreme Court held that the High Court was right in holding that marks allotted for interview and group discussion were arbitrary. The Supreme Court held that marks for group discussion cannot be kept at an equal pedestal with the interview, and that if the rule making authority wanted to keep the group discussion also as one of the modes of selection, then marks for interview and group discussion should not exceed 10 percent and 5 percent respectively of the total marks. It will be noted that the Supreme Court did not interfere with the selection because the person selected had already joined duty after completing the training though it was held that rule prescribing 40% of the total marks for interview was arbitrary.

3. It has come on record in the affidavit that has been filed on behalf of the University that there was a committee of nine members entrusted with the task of selecting a candidate for the post of Mechanic-cum-Draftsman. Applications were invited on 9th March 1989 for that post and several candidates had applied for it. It is stated in paragraph 5 of the affidavit in reply that it was an isolated post and the appointment was to be made by selection. There was no reservation for backward class candidates, as alleged. Therefore, the petitioner could not have claimed any preferred treatment for the post in question on the ground that he was a schedule caste candidate. It is stated that, out of 59 candidates who had applied for the post, 53 were found eligible for consideration including

the petitioner. The candidates were asked to answer practical test, for which ten marks were assigned. Five marks were assigned for experience and ten for their performance at the interview before the selection committee. It is stated that, having regard to their performance, the respondent No.3 came to be selected. The table showing comparative performance of the petitioner and the respondent No.3 shows that the petitioner secured 3.5 marks in practical test, while the respondent No.3 secured 8.5 marks in that test. The petitioner got 6.6 marks in the oral interview, while the respondent No.3 got 8.0 marks. In experience, the petitioner got 5 marks, which was higher than 2 marks secured by the respondent No.3. The respondent No.3 got a total of 18.5 marks out of 25, while the petitioner got 15.1 marks. There is no valid reason to doubt the integrity of the members of the selection committee who held the selection, merely because the petitioner has made allegations of general nature that the members wanted to favour the respondent No.3.

4. It will thus be seen that the petitioner had secured higher marks under the head of his experience. The gulf of difference was in the practical test where the respondent No.3 secured 5 marks more than the petitioner, who secured only 3.5 marks. The respondent No.3 in his affidavit has stated that his uncle Dr.S.M. Patel, who was Associate Professor at Sheth M.C. College Dairy Science under the respondent - University, was not a member of the selection committee and he had no role to play in the practical written test or in the oral interview. It is difficult to impute any motive or malafide intention to the members of the selection committee in absence of any reliable material. The petitioner has not been able to show in what manner the respondent No.3 was favoured. The practical test was an objective test and the result thereof shows that the respondent No.3 was a superior candidate. There is absolutely no warrant for attributing arbitrariness to the selection process. In the background of the post for which the selection was made and the type of candidates who were called for the test, it cannot be said that allotment of 10 marks for the oral interview was excessive. In fact, the petitioner himself secured 6.6 marks out of 10 at the oral interview and the respondent No.3 secured 8 marks; that means, only 1.4 marks more than the petitioner, and therefore, that component was not decisive and even if ignored, the respondent No.3 would still get higher marks than the petitioner.

5. The certificate at Annexure `A' dated 9-10-1985

produced by the petitioner shows that he was only a daily wager in the Department. Therefore, he had no right to continue in the post or claim any regular appointment therein when he was not selected for the post. Since he was a daily wager, his termination as per the order dated 31st March 1990, at Annexure `A' to the petition, with the retrenchment compensation, cannot be challenged by him. It has been stated in the additional affidavit in reply that his services were terminated from 31st March 1990 in accordance with law as regular selectee was available and the petitioner was not found suitable by the selection committee.

6. In the above view of the matter, there is no substance in this petition, and it is rejected. Rule is discharged with no orders as to costs. It will be open for the petitioner to approach the University for giving him work as daily wager, if he so chooses and it will be for the University to avail of his services as a daily wagers, if needed, in accordance with law.

[R.K.ABICHANDANI, J.]

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